

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL B. MCPHERSON,

Plaintiff,

v.

J. GREENE, CCI, et al.,

Defendants.

No. 2:23-cv-0811 WBS KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. This action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 30, 2023, plaintiff's complaint was dismissed, and plaintiff was granted thirty days in which to file an amended complaint. On July 14, 2023, plaintiff filed a document styled, "Pleading Motion," in which plaintiff acknowledges the complaint was dismissed, but claims that Clerk Keith Holland "by affidavit and Rule 77" entered a default judgment. (ECF No. 17.) However, plaintiff is mistaken. The court record reflects no entry of clerk's default, which is required prior to a motion for default judgment. Plaintiff does not provide a date on which the purported affidavit by Holland was entered or provide a copy of such alleged affidavit.

In any event, as plaintiff was advised in the last order, no defendant has yet been served with process. (ECF No. 15.) In other words, the U.S. Marshal has not yet served any defendant with summons and a complaint that the court has found contains cognizable civil rights claims.

1 Thus, Rule 55 of the Federal Rules of Civil Procedure does not apply.¹ Rather, no operative
2 complaint is on file because plaintiff's complaint was dismissed, and plaintiff has not yet filed an
3 amended complaint. Therefore, entry of default is premature and inappropriate. While plaintiff
4 appears to believe there is no legal dispute of material fact that a defendant can win (ECF No.
5 16), each defendant is entitled to notice and an opportunity to be heard before court action can be
6 taken against him or her.

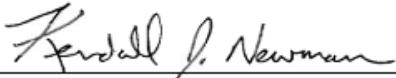
7 In an abundance of caution, plaintiff is granted an extension of time to file an amended
8 complaint that complies with the June 30, 2023 order. Plaintiff is cautioned that failure to file an
9 amended complaint will result in a recommendation that this action be dismissed.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff's July 14, 2023 motion (ECF No. 17) is denied; and

12 2. Plaintiff is granted thirty days from the date of this order in which to file an amended
13 complaint that complies with the June 30, 2023 order (ECF No. 12). Failure to timely file an
14 amended complaint will result in a recommendation that this action be dismissed.

15 Dated: August 8, 2023

16 
17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

19 /mcph0811.def.den.ext
20
21
22
23
24
25
26

27 ¹ And, once a defendant is served with process, the defendant is permitted a period of time in
28 which to file a responsive pleading. Plaintiff is not entitled to entry of clerk's default until such
time has passed and the defendant has failed to respond.